IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
(Hammond Division)

-FILED-
JUL 20 2015
At ____ M
ROBERT N. TRGOVICH, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

PERCY SPURLOCK, Petitioner-Movant,	)	Action No. ______________
v.	)	D.C. Case No. 2-13-CR-0037
UNITED STATES OF AMERICA, Respondent.	)	

PETITION IN SUPPORT OF MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE

I, the petitioner in this action, PERCY SPURLOCK, hereby file this petition in support of the foregoing Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence.

BACKGROUND OF THE CASE

In 2013 I was charged with one count of Possession With Intent To Distribute under 21 U.S.C. § 841(a)(1), punishable under 21 U.S.C. § 841(b)(1)(c); one count of Possession Of A firearm By A Felon under 18 U.S.C. § 922(b)(1); and one count of Possession Of A Firearm By a Felon under 18 U.S.C. § 922(b)(1) in the Northern District of Indiana.

Prior to my deciding to enter into a guilty plea agreement, my court-appointed attorney, Adam Tavitis, expressly stated that if I entered a plea agreement I would not be sentenced to more than 36 months imprisonment and I would be sentenced in accordance with the forthcoming Amendment 782 of the United States Sentencing Guidelines which reduced the advisory offense level assigned to drug offenders by two levels. It was only after his assuring me this would be the result of signing the guilty plea agreement that I agreed to enter into the plea agreement.

I signed and entered into the guilty plea agreement based primarily on what Attorney Tavitis led me to believe and expect. I am not an attorney and I did not expect that my own defense attorney would do anything to adversely affect or undermine me. The Government dropped two counts - one count of Possession Of A Firearm and one count for Possession Of A Firearm By A Felon.

On the day of the plea hearing, Attorney Tavitis explained that the judge would be asking me a series of questions. He instructed me to simply answer affirmatively. He explained that if I had any questions he would answer them afterwards. He continued to lead me to believed that I would be sentenced as he had previously stated in order to get me to sign the guilty plea agreement.

At this point in my life, I am sixty (60) years old without even a high school education. I did not know what else to do. I blindly trusted the advisement and direction of my attorney, Mr. Tavitis. In fact, when the Court set a sentencing date that preceded the date that the Sentencing Commission was scheduled to adopt Amendment 782, Attorney Tavitis advised that my sentencing date be changed to ensure that I would be eligible for the forthcoming amendment. My sentencing date was rescheduled for January 17, 2015.

The United States Probation Office established that the applicable base offense level was 22 after attributing twenty-three (23) grams of cocaine base (commonly referred to as "crack cocaine" or simply "crack") to the one count of Possession With Intent To Distribute based on the guilty plea agreement and in accordance with U.S.S.G. § **2D1.1**(c)(8). However, my offense of conviction was subsequently reviewed, compared to, and increased in accordance with the career criminal provisions in U.S.S.G. § 4B1.1 after the United States Probation improperly determined I had two (2) applicable prior convictions from the state of New Jersey, one in 1994 (File No. 9054058) and one in 1995 (File No. 950000663-002). As a result my base offense level was readjusted in the presentence investigation report (PSR) filed by United States Probation to offense level 32 and criminal category VI. After the three (3) level downward departure for Acceptance of Responsibility, the resulting offense level was 29. The United States Sentencing Commission advised a sentencing guideline range of 151 to 188 months imprisonment.

It was at the sentencing hearing on January 17, 2015, that the District Judge described the results of the PSR in open court. But immediately following the Court's reading of the PSR, Attorney Tavitis stood and explained that he and the Government had requested and prepared a "presentence random report" in light of my background and other mitigating factors. Attorney Tavitis further explained that two options had been established in light of numerous mitigating factors in my case: (1) Time served and five (5) years supervised release, or (2) thirty-six (36) months imprisonment and three (3) years supervised release.

When Attorney Tavitis stated the first option of time served and five years of supervised release, the Government stated an objection to prescribing this sentence. But when the second option was stated - thirty-six (36) months imprisonment and three (3) years supervised release, the Government expressly stated, "I have no objections." It was my understanding at the conclusion of the sentencing hearing that I had been sentenced as Attorney Tavitis had assured to thirty-six (36) months. In fact, Attorney Tavitis directed me to stand up and thank the judge for the lenient sentence. I stood and thanked the judge, but I remained confused.

I did not really understand everything that had just taken place. I had questions, and it was my intent to request Attorney Tavitis to appeal if there was any variance from what I had been told. There obviously existed a severe variance from what I had been told.

Immediately at the conclusion of the sentencing hearing and while still inside of the courtroom, Attorney Tavitis explicitly stated that he would come downstairs **BEFORE** I was transported back to the detention center so that he could answer questions I may have regarding what had taken place during the hearing, and to explain how I may want to proceed. Again, I was confused. I did not understand any of this. I was not actually certain what I had been officially sentenced to serve in prison even though I was fairly confident, following the latter exchange between he and the Government, that it was 36 months and 3 years of supervised release.

I had a lot of questions because there were parts of the hearing which appeared to be severely inconsistent with what he had told me in order to get me to enter into the plea agreement. It was my intent to appeal if things were not consistent with his promises. I would later discover that there were **NO** consistencies with what I had been told.

Contrary to another one of his assurances, Attorney Tavitis **NEVER** showed up to speak with me after the hearing. In fact, I have not heard from Attorney Tavitis since those final fleeting moments immediately following the hearing on January 17, 2015. He had lied and completely abandoned me for my appeal. He would not even respond to my sister as she left messages on my behalf.

Once back at the detention center, I immediately began attempting to contact Attorney Tavitis to discuss my case, my sentence, Amendment 782, and my appeal. My call was accepted approximately one to two days after I was sentenced. I was told by his assistant that he was unavailable. I left notice with his assistant of my need to speak with him. He never responded. Making matters worse, his office never accepted another one of my calls. Attorney Tavitis never came by the detention center to meet with me to discuss how to proceed further. So I contacted my sister in Georgia to ask her to attempt to call him on my behalf.

My sister attempted to call to find out why he had not contacted me and to explain my urgent need to discuss my case further. Her call was answered by his assistant on or around January 21, 2015. She was also told he was not available. She also continued making numerous attempts to contact him afterwards. But after the first contact, they stopped answering her calls.

I did not realize until transferring to MCC Chicago some time later that instead of having a thirty-six (36) month sentence, I had received a sentence of 151 months. I was shocked. This was not what I was told. I never would have signed and entered into the guilty plea agreement if I would have known at the time that I could be sentenced to 151 months. I also learned that I had not been sentenced in accordance with Amendment 782. I learned all of this as I went through processing at MCC Chicago by an administrator of the institution. I desperately needed to speak with Attorney Tavitis. But he would not respond. I needed to appeal the final judgment.

I did not know anything until recently about the process to appeal. I did not know about the deadlines to appeal. I did not knowingly, intentionally, and intelligently waive my right to appeal or to the assistance of counsel for my first appeal. I did not knowingly, intentionally, and intelligently sign and enter into the guilty plea agreement with full knowledge of the degree of punishment that I received. Under the circumstances, it was definitely my intent to appeal the final judgment but I did not have counsel to assist. Attorney Tavitis had lied and now completely abandoned me for appeal. But what I have learned is that my right to appeal should not be foreclosed because of my court-appointed counsel's absence and abandonment. I discovered this just recently. I had a constitutional right to appeal the final judgment in the criminal action of the District Court, and I had a right to counsel for my first appeal.

At this point, I have written numerous letters to Attorney Tavitis. It is more than apparent based on the incalculable attempts I have made for more than six (6) months now that Attorney Tavitis is not only avoiding me and the issue of my case and has absolutely no intent to EVER respond, but moreover he has completely abandoned me for my first appeal and impeded my ability to assert a right that I was undeniably entitled under the United States Constitution. I discovered weeks ago through a recent docket sheet received from this Court that Attorney Tavitis has either a new or second office location from the address I was previously familiar with. Though the previous letters had not been returned, I mailed the last 2 letters previously sent to his new or alternative address approximately four (4) weeks ago. Attorney Tavitis will not respond.

Attorney Adam Tavitis abandoned me and has been completely absent for my appeal. I am entitled to the relief I have requested.

ISSUES TO BE RAISED IN THIS PETITION

1. A COMPLETE ABSENCE OF COUNSEL FOR APPEAL

2. INEFFECTIVE ASSISTANCE OF COUNSEL AT CRITICAL STAGES THROUGOUT THE JUDICIAL PROCEEDING

3. I AM NOT A CAREER CRIMINAL (4B1.1) - I DO NOT HAVE THE REQUISITE PRIOR CONVICTIONS, AND ONE OF THE PRIOR CONVICTIONS WAS IMPOSED AND IMPRISONMENT HAD BEEN COMPLETED MORE THAN EIGHTEEN (18) YEARS PRIOR TO THE INSTANT OFFENSE

1. A COMPLETE ABSENCE OF COUNSEL FOR APPEAL

As stated in the proceding BRIEF BACKGROUND OF THE CASE and my foregoing Sworn Statement, court-appointed counsel, Adam Tavitis, abandoned me and has been completely absent for my direct appeal of the final judgment in the named criminal action. It was my intent to appeal the final judgment.

Attorney Tavitis expressly stated immediately following the sentencing hearing on January 17, 2015, that he would come downstairs before I was transported back to the detention center to answer questions regarding what had taken place at the sentencing hearing and to discuss how I may proceed. Attorney Tavitis did not only fail to meet with me as he had stated, he never responded to any of my subsequent calls or letters, or the attempts made by family on my behalf, since January 17, 2015. It was my intent to appeal but Attorney Tavitis had completely abandoned me and has been completely absent for my first appeal - a critical stage of the judicial proceeding.

I did not understand the process for appeal. But this right cannot be forfeited simply because Attorney Tavitis abandoned me for appeal and I did not have counsel to assist in initiating the appeal on my behalf, especially in that I was oblivious to the process. The Sixth Amendment guarantees me the right to assistance of counsel on direct appeal. (Douglas v. California, 372 US 353, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1963); Gideon v. Wainwright, 372 US 335, 83 S. Ct. 792, 9 L Ed. 2d 799 (1963)).

Now, while a claim that counsel's performance was ineffective requires a showing of prejudice before a habeas corpus can be granted (see Strickland v. Washington, 466 US 668, 80 L. Ed. 2d 647 (1984)), the complete deprivation of counsel does not, Penson v. Ohio, 488 US 75, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988). Actual denial of counsel, whether at trial or an appeal, is presumed to result in prejudice and can never be treated as harmless error. A proceeding is simply unfair if the accused is denied counsel at a critical stage. (United States v. Cronic, 466 US 648, 104 S. Ct. 2089, 80 L. Ed. 2d 657 (1984)).

The point is that I had a right to a direct appeal of my criminal conviction, and a constitutional right to the effective assistance of counsel for that direct appeal, see Mason, 97 F.3d 892 (7th Cir. 2003). Attorney Adam Tavitis' failure "to show up for appeal - which can occur either if the lawyer fails to initiate the appeal or if the lawyer fails to prosecute the appeal," Castellanos, 26 F.3d at 719 (7th Cir. 1994), denied me "of more than a fair judicial proceeding," it denied me "of the appellate proceeding altogether," Flores-Ortega, 528 US at 483 (2000).

This right does not permit a petitioner to insist that his appellate attorney advance meritless arguments. (Jones v. Barnes, 463 US 745, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983)). The Supreme Court has held that in order to protect an indigent defendant's right to the assistance of counsel on direct appeal, appointed counsel who believes his client's case is frivolous must, in addition to seeking permission to withdraw, file a brief outlining anything in the record that might support an appeal. Anders v. California, 386 US 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). But the failure of my counsel to file a no merit report when I have made every effort to contact him to request to appeal constitutes ineffective assistance of counsel that entitles me to relief without demonstrating that the initial appeal was frivolous. (See Penson v. Ohio). Stated differently, prejudice is presume in such cases because the defendant effectively has been denied the assistance of counsel at a critical stage in the proceeding. Therefore, if this court determines that a petitioner was denied the right to counsel on appeal, then it must issue the writ if it concludes there is no merit to the other claim raised in the petition. (Id).

2. INEFFECTIVE ASSISTANCE OF COUNSEL AT CRITICAL STAGES THROUGHOUT THE JUDICIAL PROCEEDING

I was denied an advocate and the right to effective assistance of counsel at critical stages in the proceeding, and to "satisfy the Constitution, counsel must function as an advocate for the defendant." (Jones b. Barnes, 463 US 745, 758, 77 L. Ed. 2d 987, 103 S. Ct. 3308 (1983)).

Claims of ineffective assistance of counsel in a criminal case are evaluated under a two-prong test set forth in Strickland v. Washington, 466 US 668, 104 S. Ct. 2052, 2064-74, 80 L. Ed. 2d 647 (1984). To succeed on any claim of ineffective assistance of counsel, the defendant must show: (1) that his attorney's representation fell below an objective standard of reasonableness; and (2) due to counsel's unprofessional errors that the results of the proceedings would have been different.

Attorney Adam Tavitis explicitly told me that I would not receive more than thirty-six months imprisonment in order to induce me into signing and entering into a guilty plea agreement with the Government. He assured me that I would receive a sentence of thirty-six (36) months or less specifically due to my diminutive criminal history, my age, and a number of other mitigating factors. He also expressly stated that I would receive a reduced sentence in accordance with Amendment 782 of the United States Sentencing Guidelines. Signing the plea agreement under these circumstances was postulated as a practical decision in that, based on the time that I had been held in custody for pretrial, I would soon be released and able to

3. I AM NOT A CAREER CRIMINAL (§ 4B1.1)

As previously stated in the BRIEF BACKGROUND OF THE CASE, United States Probation reviewed, compared to, and recommended increased punishment in accordance with the career criminal provisions in U.S.S.G. § 4B1.2 after improperly determining I had two (2) applicable prior convictions from the state of New Jersey - one in **1994** under file no. 9054058, and one in 1995 under file no. 9500000663-002. (See attached Exhibits).

On April 18, 1994 in the New Jersey Superior Court of Middlesex County, I was sentenced to one count of Possession With Intent To Distribute and one count of Theft - Receiving Stolen Property. The court imposed a sentence of 364 days imprisonment in the MCACC - a state sponsored correctional facility. Including the 247 days (see Exhibits) I served prior to sentencing for pretrial detention, I completed my term of "**incarceration**" approximately 2 to 3 months later in **1994.** Eighteen years (18) later in 2012 I was indicted by a federal grand jury for the instant controlled substance offense, commencing earlier that same year. In 2015 I was convicted, and sentenced to 151 months imprisonment.

Sentencing Guidelines § 4B1.1 provides that "a convicted criminal is a career offender for sentencing purposes if: 1) the criminal was at least eighteen years of age at the time of the instant offense; 2) the instant offense ia crime of violence or a controlled substance offense; and, 3) the criminal has at least two prior felony convictions of either crimes of violence or controlled substance offenses." Sentencing Guidelines § 4A1.1 and § 4A1.2(e) provide that a sentence imposed **more than fifteen (15) years prior** to the date of the instant **is not counted** for the purposes of 4B1.1 unless the criminal's "**incarceration**" extended into the fifteen year period. Pursuant to Sentencing Guidelines § 4B1.2(e)(1), this

1994 conviction and the term of incarceration for the two counts previously described are approximately three (3) years **OVER** the fifteen-year (15) accountable timeframe, rendering this conviction outside of the scope of § 4B1.1. I was inappropriately sentenced in accordance with the career criminal provisions under § 4B1.1.

Conversely, I was also sentenced to serve a term of three (3) years probation in the 1994 final judgment imposed by the state of New Jersey. While Black's Law, Ninth Edition, defines "incarceration" as used in § 4A1.1 as "the act of confining someone" or simply "imprisonment," "probation" is defined as "a court-imposed criminal sentence that, subject to stated conditions, **releases** a convicted person into the community **INSTEAD OF** sending the criminal to jail or prison." In other words, probation does not qualify nor is it the same as "incarceration."

The record also shows a violation of probation. First of all, on May 1, 2000, the record shows that my term of probation was "terminated," and NOT merely revoked. While "revoke" can mean "to call or summon back," "terminate" means "to put an end to; to bring to an end; to conclude." (Black's Law). In other words, a "terminated" order of probation no longer has effect, while a "revocation" may continue to have some effect. Johnson v. United States, 146 L. Ed. 2d 727 (2000). "Terminate gives the sense of finality."

The record from the state court clearly shows that I was charged with a separate and distinct count for "Violation Of Probation." In the state of New Jersey, the record makes clear that punishment for a violation of probation is separate from punishment for the underlying conviction. (See United States v. Colon, 39 Fed. Appx. 638 (CA2 2002)). In fact, as in the case of previously filed multiple count indictments (see attached) where the record unequivocally distinguishes "original charges" from the "final charges" that a person accused is subsequently convicted and sentenced to serve a term of imprisonment for, according to the May 1, 20000 judgment, was specifically the count of Violation Of Probation, **NOT** the counts from the 1994 conviction.

A prior Violation Of Probation conviction is not a prior drug offense or a crime of violence. Therefore, this conviction fails to meet the standard to qualify me as a career criminal in accordance with § 4B1.1.

I was sentenced as a career criminal in accordance with § 4B1.1 in violation of the equal protection component of the Fifth Amendment's Due Process Clause. The 1994 conviction should not have been and, under the federal Constitution, cannot be used against me. The conviction is too old, and the Violation of Probation conviction in 2000 is not a drug offense or violent. Therefore, I am entitled to the relief I have requested.

CONCLUSION

I have stated and declared under penalty or perjury pursuant to 28 U.S.C. § 1746 that this document is true and correct, and I have personal knowledge of the facts herein, including why I am entitled to the requested relief of resentencing.

My "court-appointed" counsel unconscionably misrepresented the actual consequences I was facing in order to induce me to enter into the guilty plea agreement. Even at the plea hearing, Attorney Tavitis assured me that if I merely answered the questions asked by the Court affirmatively, I would be sentenced to no more than thirty-six (36) months imprisonment. He told me that I would also receive a reduction of sentence based on Amendment 782. I foolishly believed everything he continuously told me. I am not an attorney and I did not know federal law. The Court appointed him to "assist" me. So I trusted him. Yet, he lied simply to get me to sign the plea agreement. Then once I was sentenced, he refused to accept or respond to any of my calls to discuss how I needed to proceed, and left me completely abandoned for appeal.

On the day of the sentencing hearing, January 17, 2015, the Court adopted the recommendation of United States probation by sentencing me in accordance with the career criminal provisions under U.S.S.G. § 4B1.1 for either (1) a prior 1994 conviction that is too old to use pursuant to § 4A1.1, cmt. 1, and § 4A1.2(e)(1), (2) a 2000 conviction that is neither a controlled substance conviction or a violent felony, or (3) by improperly holding that the sentence imposed by the state of New Jersey in 2000 was for the 1994 charges that I had already been sentenced and convicted for in 1994, and consequently incarcerated from 1993 to 1994. The attached record of the State court makes clear that the judgment for the 2000 conviction is for a completely separate charge from the 1994 final judgment. But an even greater issue is that I am not certain which circumstance applies to my case because I have NEVER been able to speak with Attorney Tavitis to clarify this point due to his unexplained and perpetual absence, which leads me to the most egregious issue of all.

Attorney Tavitis expressly stated at the conclusion of the sentencing hearing on January 17, 2015, that he would come down to speak with me before I was transported back to the detention center to answer my questions and to explain how I should proceed. He never came down to see me. But not only that. He has NEVER returned a call to me or my sister, visited me again, or responded to any of the letters that I have mailed. While this Court may somehow find the other issues incredulously excusable, his complete abandonment is absolutely incorrible. His abandonment was not merely unprofessional and indescribably irresponsible, he deprived me of my constitutional right to a direct appeal of the final judgment and my right to counsel for appeal. The other issues may have been addressed through the appellate process perhaps, but in Attorney Tavitis' complete absence I was denied the right to even present these issues on appeal. From Gideon v. Wainwright to Douglas v. California to Evitts v. Lucey and Penson v. Ohio, and to the innumerable other Supreme Court and circuit court decisions that have been passed down for fifty-plus years, in the complete absence of counsel prejudice is presumed, and I am entitled under the United States Constitution to the relief I have respectfully requested.

PRAYER

I pray for the relief requested in the foregoing Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, or Correct Sentence in light of the foregoing.

PAPERS IN SUPPORT OF THIS PETITION

This petition is supported by and submitted to this Honorable Court in support of my Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, or Correct Sentence, the foregoing Sworn Statement, the judicial notices filed, the Certificate of Service, any attached exhibits, and any evidence or argument that may be presented at a hearing or trial in this action.

This document is signed by me on this 10 day of July 2015.

Respectfully submitted,

Percy Spurlock

PERCY SPURLOCK, Petitioner-Movant
Federal Register No. 12817-027
United States Penitentiary
1300 Metropolitan Avenue
Post Office Box 1000
Leavenworth, Kansas 66048-1000

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing and this document are true and correct, each document has been served in good faith, and I have personal knowledge of the facts herein.

A certified copy featuring my original signature has been mailed to the Clerk of this Court on this day to be filed upon receipt. I also request that a copy of this document be forwarded by the Clerk to counsel for Respondent.

This document is signed by me on this 10 day of July 2015.

Percy Spurlock

PERCY SPURLOCK, Declarant
Federal Register No. 12817-027
United States Penitentiary
1300 Metropolitan Avenue
Post Office Box 1000
Leavenworth, Kansas 66048-1000

POSSESSION OF C.D.S. - N.J.S.A. 2C:35-10a(1)
POSSESSION WITH INTENT TO DISTRIBUTE - N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3)
DISTRIBUTION OF C.D.S. - N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3)

[illegible] 2 [illegible] '95
[illegible] SUPERIOR COURT

NEW JERSEY SUPERIOR COURT
MIDDLESEX COUNTY
LAW DIVISION
(CRIMINAL)

THE STATE OF NEW JERSEY

vs.

PERCY SPURLOCK -002
and MELVIN HOLMES

Defendant.

FILE NO. 95000663-002
INDICTMENT NO. 95-05-00681 I
SECOND GRAND JURY
MARCH 1995 STATED SESSION

JULY TERM 1994
W-1995-000322-1225
W-1995-000323-1225
S-1995-000195-1225

DRUG COURT

COUNT 1 — POSSESSION OF C.D.S. — 3RD DEGREE

The Grand Jurors of the State of New Jersey, for the County of Middlesex, upon their oaths, present that **PERCY SPURLOCK**, on or about the 7th day of February, 1995, in the Township of Woodbridge, in the County of Middlesex, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a Schedule II, controlled dangerous substance, namely, Cocaine, contrary to the provisions of N.J.S.A. 2C:35-10a(1) and against the peace of this State, the Government and dignity of the same.

COUNT 2 — POSSESSION WITH INTENT TO DISTRIBUTE — 3RD DEGREE

The Grand Jurors of the State of New Jersey, for the County of Middlesex, upon their oaths, present that **PERCY SPURLOCK**, on or about the 7th day of February, 1995 in the Township of Woodbridge, in the County of Middlesex, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess with intent to distribute, a controlled dangerous substance, namely, Cocaine, in a quantity of less than one-half ounce, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3) and against the peace of this State, the Government and dignity of the same.

COUNT 3 DISTRIBUTION OF C.D.S. 3RD DEGREE

The Grand Jurors of the State of New Jersey, for the County of Middlesex, upon their oaths, present that **PERCY SPURLOCK**, on or about the 7th day of February, 1995, in the Township of Woodbridge, in the County of Middlesex, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely distribute to Investigator Ivan Scott, a controlled dangerous substance, namely, Cocaine, in a quantity of less than one-half ounce, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3) and against the peace of this State, the Government and dignity of the same.

COUNT 4 POSSESSION OF C.D.S. 3RD DEGREE

The Grand Jurors of the State of New Jersey, for the County of Middlesex, upon their oaths, present that **PERCY SPURLOCK**, on or about the 17th day of February, 1995, in the Township of Woodbridge, in the County of Middlesex, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a Schedule II, controlled dangerous substance, namely, Cocaine, contrary to the provisions of N.J.S.A. 2C:35-10a(1) and against the peace of this State, the Government and dignity of the same.

COUNT 5 POSSESSION WITH INTENT TO DISTRIBUTE 3RD DEGREE

The Grand Jurors of the State of New Jersey, for the County of Middlesex, upon their oaths, present that **PERCY SPURLOCK**, on or about the 17th day of February, 1995, in the Township of Woodbridge, in the County of Middlesex, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess with intent to distribute a controlled dangerous substance, namely, Cocaine, in a quantity of less than one-half ounce, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3) and against the peace of this State, the Government and dignity of the same.

COUNT 6 DISTRIBUTION OF C.D.S. 3RD DEGREE

The Grand Jurors of the State of New Jersey, for the County of Middlesex, upon their oaths, present that **PERCY SPURLOCK**, on or about the 17th day of February, 1995, in the Township of Woodbridge, in the County of Middlesex, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely distribute to Investigator Ivan Scott, a controlled dangerous substance, namely, Cocaine, in a quantity of less than one half ounce, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3) and against the peace of this State, the Government and dignity of the same.

COUNT 7 POSSESSION OF C.D.S. 3RD DEGREE

The Grand Jurors of the State of New Jersey, for the County of Middlesex, upon their oaths, present that **PERCY SPURLOCK and MELVIN HOLMES**, on or about the 23rd day of February, 1995, in the Township of Woodbridge, in the County of Middlesex, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a Schedule II, controlled dangerous substance, namely, Cocaine, contrary to the provisions of N.J.S.A. 2C:35-10a(1) and against the peace of this State, the Government and dignity of the same.

3RD DEGREE

COUNT 8 POSSESSION WITH INTENT TO DISTRIBUTE

The Grand Jurors of the State of New Jersey, for the County of Middlesex, upon their oaths, present that PERCY SPURLOCK and MELVIN HOLMES, on or about the 23rd day of February, 1995, in the Township of Woodbridge, in the County of Middlesex, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess with intent to distribute, a controlled dangerous substance, namely, Cocaine, in a quantity of less than one-half ounce, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3) and against the peace of this State, the Government and dignity of the same.

TRUE BILL

Foreperson

COUNTY PROSECUTOR

Assistant Prosecutor

PLEA FORM

County ________

DEFENDANT'S NAME Percy Spurlock before Judge ________ Pros. No. ________

1. List the charges to which you are pleading guilty:

Ind./Acc./Compl.#	Count	Nature of Offense	Degree		STATUTORY MAXIMUM Time	Fine	VCCB Assmt*
[illegible]	3	[illegible]	3	MAX	5	50,000	50
	6	[illegible]	3	MAX	5	50,000	50
				MAX			
				MAX			
				MAX			
				TOTAL	10	100,000	100

Your total exposure as a result of this plea is:

PLEASE CIRCLE APPROPRIATE ANSWER

2. a. Did you commit the offense(s) to which you are pleading guilty? [YES] [NO]
   b. Do you understand that before the judge can find you guilty, you will have to tell the judge what you did that makes you guilty of the particular offense(s)? [YES] [NO]

3. Do you understand what the charges mean? [YES] [NO]

4. Do you understand that by pleading guilty you are giving up certain rights? Among them are:
   a. The right to a jury trial in which the State must prove your guilt beyond reasonable doubt? [YES] [NO]
   b. The right to remain silent? [YES] [NO]
   c. The right to confront the witnesses against you? [YES] [NO]

5. Do you understand that if you plead guilty:
   a. You will have a criminal record? [YES] [NO]
   b. Unless the plea agreement provides otherwise, you could be sentenced to serve the maximum time in confinement, to pay the maximum fine and to pay the maximum Violent Crimes Compensation Board Assessment? [YES] [NO]
   c. You must pay a minimum Violent Crimes Compensation Board Assessment of $50 ($100 minimum if you are convicted of a crime of violence) for each count to which you plead guilty? (Penalty is $30 if offense occurred between January 9, 1986 and December 22, 1991 inclusive. $25 if offense occurred before January 1, 1986.) [YES] [NO]
   d. If the offense occurred on or after February 1, 1993 and you are being sentenced to probation or a State correctional facility, you must pay a transaction fee of up to $1.00 for each occasion when a payment or installment payment is made? [YES] [NO]
   e. If the offense occurred on or after August 2, 1993 you must pay a $75 Safe Neighborhood Services Fund assessment for each conviction? [YES] [NO]
   f. If the offense occurred on or after January 5, 1994 and you are being sentenced to probation, you must pay a fee of up to $25 per month for the term of probation? [YES] [NO]

Defendant's Initials PLS

* VIOLENT CRIMES COMPENSATION BOARD ASSESSMENT

US v. PERCY SPURLOCK 55

6. Do you understand that the court could in its discretion impose a minimum time in confinement to be served before you become eligible for parole, which period could be as long as one half of the period of the custodial sentence imposed? [YES] [NO]

7. Did you enter a plea of guilty to any charges that require a mandatory period of parole ineligibility or a mandatory extended term? [YES] [NO]
a. If you are pleading guilty to such a charge, the minimum mandatory period of parole ineligibility is ____ years and ____ months (fill in number of years/months) and the maximum period of parole ineligibility can be ____ years and ____ months (fill in number of years/months) and this period cannot be reduced by good time, work, or minimum custody credits.

8. Are you pleading guilty to a crime that contains a presumption of imprisonment which means that it is almost certain that you will go to state prison? [YES] [NO]

9. Are you presently on probation or parole? [YES] [NO]
a. Do you realize that a guilty plea may affect your probation or parole? [YES] [NO] [N/A]

10. Are you presently serving a custodial sentence on another charge? [YES] [NO]
a. Do you understand that a guilty plea may affect your parole eligibility? [YES] [NO] [N/A]

11. Do you understand that if you have plead guilty to, or have been found guilty on other charges, or are presently serving a custodial term and the plea agreement is silent on the issue, the court may require that all sentences be made to run consecutively? [YES] [NO] [N/A]

12. List any charges the prosecutor has agreed to recommend for dismissal:

Ind./Acc./Compl.#	Count	Nature of Offense and Degree
681-05-95	1, 2	Poss., Poss. w/ Intent
	4, 5	Poss., Poss. w/ Intent
	7, 8	Poss., Poss. w/ Intent

13. Specify any sentence the prosecutor has agreed to recommend.
Maximum 4 years with a 24 month parole disqualifier concurrent

14. Has the prosecutor promised that he or she will **NOT**:
a. Speak at sentencing? [YES] [NO]
b. Seek an extended term of confinement? [YES] [NO]
c. Seek a stipulation of parole ineligibility? [YES] [NO]

15. Are you aware that you may be ordered to pay restitutionif the court finds there is a victim who has suffered a loss and if the court finds that you are able or will be able in the future to pay restitution? [YES] [NO] [N/A]

Defendant's Initials P.L.S.

16. Do you understand that if you are a public office holder or employee, you can be required to forfeit your office or job by virtue of your plea of guilty? [YES] [NO] [N/A]

17. Do you understand that if you are not a United States citizen or national, you may be deported by virtue of your plea of guilty? [YES] [NO] [N/A]

18. Have you discussed with your attorney the legal doctrine of merger? [YES] [NO] [N/A]

19. Are you giving up your right at sentence to argue that there are charges you pleaded guilty to for which you cannot be given a separate sentence? [YES] [NO] [N/A]

20. List any other promises or representations that have been made by you, the prosecutor, your defense attorney, or anyone else as a part of this plea of guilty.

[illegible] [illegible] on VOP to be flat time and concurrent to instant offense.
license suspension NOT to exceed 6 MOS
forfeit any right title & interest to monies seized at time of arrest.

21. Have any promises other than those mentioned on this form, or any threats, been made in order to cause you to plead guilty? [YES] [NO]

22. a. Do you understand that the judge is not bound by any promises or recommendations of the prosecutor and that the judge has the right to reject the plea before sentencing you and the right to impose a more severe sentence? [YES] [NO]

b. Do you understand that if the judge decides to impose a more severe sentence than recommended by the prosecutor, that you may take back your plea? [YES] [NO]

c. Do you understand that if you are permitted to take back your plea of guilty because of the judge's sentence, that anything you say in furtherance of the guilty plea cannot be used against you at trial? [YES] [NO]

23. Are you satisfied with the advice you have received from your lawyer? [YES] [NO]

24. Do you have any questions at all concerning this plea? [YES] [NO]

DATE 6 July 1995 DEFENDANT Percy L. Spurlock

DEFENSE ATTORNEY [signature]

PROSECUTOR [signature]

[ ] This plea is a result of the judge's conditional indications of the maximum sentence he/she would impose independant of the prosecutor's recommendation. Accordingly, the **"Supplemental Plea Form for Non-Negotiated Pleas"** has been completed.

SUPPLEMENTAL PLEA FORM

FOR DRUG OFFENSES OCCURRING ON OR AFTER 7/9/87

The following additional questions only need to be answered if you are pleading guilty pursuant to an offense under N.J.S.A. 2C:35-1 et seq. or N.J.S.A. 2C:36-1 et seq.

Have you and the Prosecutor entered into any agreement to provide for a lesser sentence or period of parole ineligibility than would otherwise be required? [YES] [NO] (NO circled)

Do you understand that if you plead guilty

a. You will be required to forfeit your drivers license for a period of time from 6 to 24 months? [YES] [NO] (YES circled)

b. You will be required to pay a Forensic Laboratory fee of $50 for each offense for which you plead guilty? [YES] [NO] (YES circled)

c. You will be required to pay a mandatory drug enforcement and demand reduction penalty as listed below for each offense for which you plead guilty? [YES] [NO] (YES circled)

The mandatory penalties are as follows

(1) $3,000 in the case of a 1st degree crime

(2) $2,000 in the case of a 2nd degree crime

(3) $1,000 in the case of a 3rd degree crime (circled) x2 = 2000 DEDR

(4) $ 750 in the case of a 4th degree crime 150 SNSF

(5) $ 500 in the case of a disorderly persons or petty disorderly persons offense 100 CRD 100 VCCB

TOTAL D.E.D.R. Penalty 2000 2350

DATE 7 July 1995

DEFENSE ATTORNEY [signature]

PROSECUTOR [signature]

[signature: Percy J. Spurlock]
DEFENDANT

State of New Jersey

v.

Percy L. Spurlock

New Jersey Superior Court
Law Division - Criminal

- [x] JUDGMENT OF CONVICTION
- [ ] CHANGE OF JUDGMENT
- [x] ORDER FOR COMMITMENT
- [ ] INDICTMENT / ACCUSATION DISMISSED
- [ ] JUDGMENT OF ACQUITTAL
- [x] VIOLATION OF PROBATION - TERMINATED

DATE OF BIRTH: 10/1954
DATE OF ARREST: 08/13/1993
DATE OF ORIGINAL PLEA: 06/08/1995
SBI NUMBER: 0051985B
DATE INDICTMENT / ACCUSATION FILED: 10/26/1993
ORIGINAL PLEA: NOT GUILTY / [x] GUILTY

ADJUDICATION BY: [x] GUILTY PLEA DATE 07/07/1995 ; JURY TRIAL DATE ; NON-JURY TRIAL DATE ; Dismissed/Acquitted DATE

ORIGINAL CHARGES

IND/ACC NO.	COUNT	DESCRIPTION	DEGREE	STATUTE
93-10-1866	1	Possession With Intent to Distribute (Cocaine)	3rd	NJSA 2C:35-10a(1)
	5	Theft - Receiving Stolen Property	3rd	NJSA 2C:20-7

FINAL CHARGES

COUNT	DESCRIPTION	DEGREE	STATUTE
	VIOLATION OF PROBATION		

It is, therefore, on 05/01/2000 ORDERED and ADJUDGED that the defendant is sentenced as follows:

As to the VOP: Probationary supervision terminated as of this date and the defendant is Committed to the custody of the Commissioner of the Department of Corrections for a term of four years, concurrent to the sentence this day imposed on I.95-5-681. All original financial impositions are hereby reimposed and to be collected through parole.

- [ ] You are hereby sentenced to community supervision for life.
- [ ] The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- [ ] The court finds that the defendant is amenable to sex offender treatment.
- [ ] The court finds that the defendant is willing to participate in sex offender treatment.
- [x] It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

	Total Number of Days	DATE (From/To)
[x] Defendant is to receive credit for time spent in custody (R. 3:21-8).	322	08/15/1993-04/28/1994; 04/18/1994-08/21/1994
[ ] Defendant is to receive gap time credit for time spent in custody (N.J.S.A. 2C:44-5b(2))		

TOTAL CUSTODIAL TERM: four years INSTITUTION: CDC TOTAL PROBATION TERM: terminated

CP0105 (rev. 12/98)

COPIES TO: CHIEF PROBATION OFFICER; STATE POLICE; AOC CRIMINAL PRACTICE DIVISION; DEPARTMENT OF CORRECTIONS or COUNTY PENAL INSTITUTION; Administrative Office Of The Courts; State Bureau Of Identification

State of New Jersey v. Percy L. Spurlock [illegible] # [illegible] [illegible] # [illegible]

Total Fine

Total RESTITUTION

If the offense occurred on or after [illegible] an assessment of $50 is imposed on each count on which the defendant was convicted unless the below indicates a higher assessment to N.J.S.A. 2C:43-3.1. (Assessment is $30 if offense is on or after January 9, 1986 but before December 23, 1991, unless a higher penalty is noted. Assessment is $25 if offense is before January 9, 1986.)

Assessment Imposed on

count(s)

is each

Total VCCB Assessment

Installment payments are due at the rate of per beginning (DATE)

If any of the offenses occurred on or after July [illegible], 198[illegible] and is an offense under Chapter 35 or 36 of Title 2C:

1) A mandatory Drug Enforcement Demand Reduction (D.E.D.R.) penalty is imposed for each count. (Check as many as apply.)

1st Degree @$3000 — 4th Degree @$750
2nd Degree @$2000 — Disorderly Persons or Petty
3rd Degree @$1000 — Disorderly Persons @ $500

Total D.E.D.R. Penalty

Court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for a term of the program.

2) A forensic laboratory fee of $50 per offense is ORDERED. Offenses @ $50

Total Lab FEE

3) Name of Drugs Involved

4) A mandatory driver's license suspension of months is ORDERED.

The suspension shall begin today and end

Driver's license number

(IF THE COURT IS UNABLE TO COLLECT LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING.)

Defendant's address

Eye Color Sex Date of Birth 11/10/1954

The defendant is the holder of an out-of-state driver's license from the following jurisdiction Driver's License

Defendant's non-resident driving privileges are hereby revoked for months.

If the offense occurred on or after February 1, 1993 but was before March 13, 1995 and the sentence is to probation or to a State Correctional Facility, a transaction fee of up to $1.00 is ordered for each occasion when a payment or installment is made (P.L. 1992, c.169). If the offense occurred on or after March 13, 1995 and the sentence is to probation, or the sentence otherwise requires payments of financial obligations to the probation division, a transaction fee of up to $2.00 is ordered for each occasion when a payment is made (P.L. 1995, c.9).

If the offense occurred on or after August 2, 1993, a $75.00 Safe Neighborhood Services Fund assessment is ordered for each conviction. P.L. 1993, c. 220 TOTAL

If the offense occurred on or after January 5, 1994 and the sentence is to probation, a fee of up to $25 per month for the probationary term is ordered. (P.L. 1993, c. 275) Amount per month

If the crime occurred on or after January 9, 1997, a $30 Law Enforcement Officers Training and Equipment Fund penalty is ordered. Total:

NAME (Court Clerk or Person who prepares this form)	TELEPHONE NUMBER	NAME (Attorney for defendant at Sentencing)
E.A.	(732) 981-3216	Martin Matlaga, Esquire

STATEMENT OF REASONS - Include all applicable aggravating and mitigating factors

VIOLATION OF PROBATION

Aggravating Factors: the risk defendant will commit another offense and the need to detrer him and others from violating the laws.

Mitigating Factors: Defendant's conduct neither caused nor threatened serious harm and he did not contemplate that the conduct would cause or threaten serious harm. Imprisonment of this defendant will entail excessive hardship to his dependents.

The aggravating factors outweigh the mitigating factors.

JUDGES NAME	JUDGE (Signature)	DATE
Hon. Travis L. Francis, JSC	[signature]	05/01/2000

Administrative Office Of The Courts
State Bureau Of Identification
COPIES TO: CHIEF PROBATION OFFICER STATE POLICE AOC CRIMINAL PRACTICE DIVISION DEPARTMENT OF CORRECTIONS OR COUNTY PENAL INSTITUTION

CPO103 (rev. 12/96)

US v. PERCY SPURLOCK 71

State Of New Jersey
v.

New Jersey Superior Court
Middlesex County
Law Division - Criminal

Percy Lee Spurlock
Defendant (Specify Complete Name)

[ ] Amended
[ ] Judgment Of Conviction
[ ] Change Of Judgment
[X] Order Of Commitment
[ ] Indictment / Accusation Dismissed
[ ] Judgment Of Acquittal
[ ] V.O.P.

93003453-001 Prosecutor No
11/10/5[illegible] Date Of Birth
9054058 S.B.I.#
08/15/93 Date Of Arrest
10/26/93 Date Of Ind/ACC Filed
03/08/94 Date Of Original Plea
Original Plea
[ ] NOT GUILTY [ ] GUILTY

ADJUDICATION BY: DATE
[X] GUILTY PLEA 03/08/94
[ ] JURY TRIAL
[ ] NON JURY TRIAL
[ ] Dismissed/Acquitted

ORIGINAL CHARGES

IND/ACC No	Count	Description	Degree	Statute
1866-10-93	1	Poss. w/int. to dist CDS (cocaine)	2nd	2C:35-5a1,5b2
	2	Poss. of CDS (cocaine)	3rd	2C:35-10a1
	3	Maintaining a Narcotics Resort	3rd	24:21-21a6
	4	Fencing - Dealing in Stolen Property	3rd	2C:20-7.1b
	5	Theft-Receiving Stolen Property	3rd	2C:20-7

FINAL CHARGES

Count	Description	Degree	Statute
1	Poss.W/int. to dist. CDS (cocaine) (as amended)	3rd	2C:35-5a1,5b2
5	Theft-receiving stolen property	3rd	2C:20-7

It is, therefore, on 04/18/94 ORDERED and ADJUDGED that the defendant is sentenced as follows:

As to count 1, defendant is sentenced to 3 years on probation and shall comply with all usual conditions and the following special conditions:
The defendant is to serve 364 days in the MCACC.
The defendant is to complete a drug and alcohol dependances evaluation through probation and comply with all recommendations. If recommended by probation, the defendant is to enroll through probation in an out-patient program for drug education, therapy and rehabilitation and complete all prescribed follow-up programs.
The defendant is to refrain from possession, use and distribution of CDS and associating with those who do. The defendant is to submit to random urine monitoring as recommended by probation.
As to count 5, the defendant is sentenced to 3 years on probation and shall comply with all usual conditions and the following special conditions:
The defendant is to serve 364 days in the MCACC.

All payments of fines, penalties and restitution ordered by the Court except payments made on the date of sentencing shall be by either cash, money order or certified check.

[X] It is further ORDERED that the sheriff deliver the Defendant to the appropriate correctional authority.

[X] Defendant is to receive credit for time spent in Custody. 247 (Total No. Days) 08/15/93 - 04/18/94 (Dates(From/To))

/ / - / / (Dates(From/To)) / / - / / (Dates(From/To))

[ ] Defendant is to receive gap time credit for time spent in custody (NJSA 2C:44-5b(2) 0 / / - / /

Total Custodial Term 3 years Institution MCACC Total Probation Term 364 days

Administrative Office Of The Courts CP0106 (Rev 1/93) Replaces LR-34 & LR-35)
State Bureau Of Identification CDR 4 (Rev 01/93)
COPIES TO: CHIEF PROBATION OFFICER, STATE POLICE, AOC CRIMINAL PRACTICE DIVISION, DEPT OF CORRECTIONS or COUNTY PENAL INSTITUTION

State of New Jersey v. Percy Lee Spurlock S.B.I. # [illegible] PROMIS # [illegible]

Total FINE $ 0.00

Total RESTITUTION $ 0.00

If the offense occured on or after December 23, 1991 an assessment of $50 is imposed on each count on which the defendant was convicted unless the below indicates a higher assessment to N.J.S.A 2C:43-3.1. (Assessment is $30 if offense is on or after January 9, 1986 but before December 23, 1991, unless a higher penalty is noted. Assessment is $25 if offense is before January 9, 1986.)

[X] Assessment Imposed on count(s) 2 is $ 50.00 each.

Total VCCB PENALTY $ 100.00

[X] Installment payments are due at the rate of $ 25.00 per month, beginning / / (DATE)

If any of the offenses occured on or after July 9, 1987, and is for violation of Chapter 35 or 36 of Title 2C:

1) A mandatory Drug Enforcement Demand Reduction (DEDR) penalty is imposed for each count. (Write in # times for each.)

___ 1st Degree @ $3000 ___ 4th Degree @ $750
___ 2nd Degree @ $2000 ___ Disorderly Persons Or Petty
_1_ 3rd Degree @ $1000 ___ Disorderly Persons @ $500

Total D.E.D.R. Penalty $ 1000.00

[ ] Court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program.

2) A forensic laboratory fee of $50 per offense is ORDERED. _1_ Offenses @ $50.

Total LAB FEE $ 50.00

3) Name Of Drugs Involved cocaine

4) A mandatory driver's license suspension of 6 months is ORDERED. The suspension shall begin today, 04/18/94 and end 10/18/94.

Driver's License Number

(IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING.)

Defendant's Address 955 Route 1, Apt. 7, Avenel, NJ

Eye Color BRN Sex MALE Date Of Birth 11/10/54

[ ] The defendant is a holder of an out-of-state driver's license from following jurisdiction ___ Driver's License ___

[ ] Your non-resident driving privileges are hereby revoked for 0 Months.

If the offense occured on or after February 1, 1993 and the sentence is to probation or to a State Correctional facility a transaction fee of up to $1.00 is ordered for each occasion when a payment or installment payment is made. (PL 1992, c.169)

If the conviction or plea for this offense occured after August 2, 1993, an assessment of $75.00 is imposed for each count on which the defendant was convicted or pled. Counts 2 X $75.00 = SNSF $ 150.00

NAME (Court Clerk Or Person who prepares this form)	TELEPHONE NUMBER	NAME (Attorney for Defendant at Sentencing)
M.K.	908-745-4072	John Casale

STATEMENT OF REASONS

A presumption against imprisonment applies to this defendant with respect to counts 1 and 2.
AGGRAVATING FACTORS:
As to counts 1 and 5, the risk that the defendant will commit another offense;
The need for deterring the defendant and others from violating the law.
MITIGATING FACTORS:
As to counts 1 and 5, defendant has no prior convictions and is likely to respond to probationary treatment.
As to count 5, defendant is willing to compensate victims;
As to count 1, mitigating factors somewhat preponderate over aggravating factors.
As to count 5, mitigating factors preponderate over aggravating factors.
The negotiated plea agreement was modified at the time of sentencing, and the Court accepted the modified agreement.

JUDGE NAME	JUDGE (Signature)	DATE
STEVEN L. LEFELT		04/18/94

CP0106 (Rev. 1/93) Replaces LR-34 & LR-35)
CDR 4 (Rev 01/93)

Administrative Office Of The Courts
State Bureau Of Identification
COPIES TO: CHIEF PROBATION OFFICER, STATE POLICE, AOC CRIMINAL PRACTICE DIVISION, DEPT OF CORRECTIONS or COUNTY PENAL INSTITUTION

Percy Lee Spurlock [illegible] [illegible]

Sentence Contd.

[illegible] for count 5 to run concurrent with count 1.
[illegible] defendant is to pay restitution through probation.
[illegible] VCCB penalty is imposed for counts 1 and 5 for a total of $100. $75 SNSF penalty is imposed for counts 1 and 5 for a total of $150. As to count 1, $1,000 DEDR and $50 lab fee. Penalties and fees shall be paid $25 per month through probation 30 days after release from MCACC.
As to count 1, defendant's driver's license is suspended for 6 months.
Counts 2, 3 and 4 of 1866-10-93 and counts 1 and 2 of W690888 are dismissed.

[illegible handwriting]

PLEA FORM

Prosecutor's Case No. 93-3453

County [illegible]

DEFENDANT'S NAME Percy Spurlock JUDGE'S NAME [illegible]

1. List the charges to which you are pleading guilty:

Ind./Acc./Compl. Nos.	Count	Nature of Offense	Degree		Statutory Maximum Time	Statutory Maximum Fine	VCCB* Penalty
13-10-01566	1	Poss CDS w/Intent to Dist	2°	MAX	10 YR	100,000	50.00
		[illegible]		MAX			75.00 [illegible]
	5	RSP	3°	MAX	5 YR	7,500	50.00
				MAX			75.00 [illegible]
				MAX			

Your total exposure as a result of this plea is: TOTAL 15 YR 107,500 250.00

PLEASE CIRCLE APPROPRIATE ANSWER

2. a. Did you commit the offense(s) to which you are pleading guilty? [YES] [NO]
b. Do you understand that before the judge can find you guilty, you will have to tell the judge what you did that makes you guilty of the particular offense(s)? [YES] [NO]

3. Do you understand what the charges mean? [YES] [NO]

4. Do you understand that by pleading guilty you are giving up certain rights? Among them are:
a. The right to a jury trial in which the State must prove your guilt beyond a reasonable doubt? [YES] [NO]
b. The right to remain silent? [YES] [NO]
c. The right to confront the witnesses against you? [YES] [NO]

5. Do you understand that if you plead guilty,
a. You will have a criminal record? [YES] [NO]
b. Unless the plea agreement provides otherwise, you could be sentenced to serve the maximum time in confinement, to pay the maximum fine and to pay the maximum VCCB penalty? [YES] [NO]
c. You must pay a minimum Violent Crimes Compensation penalty of $30 for each count to which you plead guilty? ($25 if crime occurred before 1/9/86) [YES] [NO]

6. Do you understand that the court could in its discretion impose a minimum time in confinement to be served before you become eligible for parole, which period could be as long as one half of the period of the custodial sentence imposed? [YES] [NO]

7. Did you enter a plea of guilty to any charges that require a mandatory period of parole ineligibility or a mandatory extended term? [YES] [NO]
a. If you are pleading guilty to such a charge, the minimum mandatory period of parole ineligibility is ___ years and ___ months (fill in number of years/months) and the maximum period of parole ineligibility can be ___ years and ___ months (fill in number of years/months) and this period cannot be reduced by good time, work, or minimum custody credits.

8. Are you pleading guilty to a crime that contains a presumption of imprisonment which means that it is almost certain that you will go to state prison? [YES] [NO]

9. Are you presently on probation or parole? [YES] [NO]
a. Do you realize that a guilty plea may result in a violation of your probation or parole? [YES] [NO] [N/A]

Defendant's Initials P.L.S.

*Violent Crimes Compensation Board Penalty

US v. PERCY SPURLOCK 75

10. Are you presently serving a custodial sentence on another charge? [YES] [NO] *(NO circled)*
    a. Do you understand that a guilty plea may affect your parole eligibility? [YES] [NO] [N/A] *(N/A circled)*

11. Do you understand that if you have plead guilty to, or have been found guilty on other charges, or are presently serving a custodial term and the plea agreement is silent on the issue, the court may require that all sentences be made to run consecutively? [YES] [NO] [N/A] *(YES circled)*

12. List any charges the prosecutor has agreed to recommend for dismissal:

Ind./Acc./Compl. #	Count	Nature of Offense and Degree
93-10-1866	2	Poss COS 3⁰
	3	MAINT NARC RESORT 3⁰
	4	FENCING 3⁰

13. Specify any sentence the Prosecutor has agreed to recommend.
    TREAT AS 3⁰ for purposes of sentencing
    PROBATION @ 364 days in County Jail
    RESTITUTION, if applicable

14. Has the Prosecutor promised that he or she will NOT:
    a. Speak at sentencing? [YES] [NO] *(NO circled)*
    b. Seek an extended term of confinement? [YES] [NO] *(YES circled)*
    c. Seek a stipulation of parole ineligibility? [YES] [NO] *(YES circled)*

15. Are you aware that you may be ordered to pay restitution? [YES] [NO] [N/A] *(YES circled)*

16. Do you understand that if you are a public office holder or employee, you can be required to forfeit your office or job by virtue of your plea of guilty? [YES] [NO] [N/A] *(YES circled)*

17. Do you understand that if you are not a United States citizen or national, you may be deported by virtue of your plea of guilty? [YES] [NO] [N/A] *(YES circled)*

18. Have you discussed with your attorney the legal doctrine of merger? [YES] [NO] [N/A] *(YES circled)*

19. Are you giving up your right at sentence to argue that there are charges you pleaded guilty to for which you cannot be given a separate sentence? [YES] [NO] [N/A] *(YES circled)*

20. List any other promises or representations that have been made by you, the prosecutor, your defense attorney, or anyone else as a part of this plea of guilty:
    NONE — adult indict fb
    contingent on Δ having no prior record

Defendant's Initials P. J. A.

...any promises other than those contained on this form, or any threats been made in order to cause you to plead guilty? [YES] (NO)

a. Do you understand that the judge is not bound by any promises or recommendations of the prosecutor and that the judge has the right to reject the plea before sentencing you and the right to impose a more severe sentence? (YES) [NO]

b. Do you understand that if the judge decides to impose a more severe sentence than recommended by the prosecutor, that you may take back your plea? (YES) [NO]

c. Do you understand that if you are permitted to take back your plea of guilty because of the judge's sentence, that anything you say in furtherance of the guilty plea cannot be used against you at trial? (YES) [NO]

23. Are you satisfied with the advice you have received from your lawyer? (YES) [NO]

24. Do you have any questions at all concerning this plea? [YES] (NO)

DATE: 3/8/94

Percy A. Spurlock
Defendant

DEFENSE ATTORNEY John Paul Cavale

PROSECUTOR ______________________

[ ] This plea is the result of the judge's conditional indications of the maximum sentence he/she would impose independent of the prosecutor's recommendation. Accordingly, the "Supplemental Plea Form for Non-Negotiated Pleas" has been completed.

SUPPLEMENTAL PLEA FORM

FOR DRUG OFFENSES OCCURRING ON OR AFTER 7/9/87

The following additional questions only need to be answered if you are pleading guilty pursuant to an offense under N.J.S.A. 2C:35-1 et seq. or N.J.S.A. 2C:36-1 et seq.

Have you and the Prosecutor entered into any agreement to provide for a lesser sentence or period of parole ineligibility than would otherwise be required? [YES] [NO]

Do you understand that if you plead guilty

a. You will be required to forfeit your drivers license for a period of time from 6 to 24 months? [YES] [NO]

b. You will be required to pay a Forensic Laboratory fee of $50 for each offense for which you plead guilty? [YES] [NO]

c. You will be required to pay a mandatory drug enforcement and demand reduction penalty as listed below fr each offense for which you plead guilty? [YES] [NO]

The mandatory penalties are as follows:

(1) $3,000 in the case of a 1st degree crime

(2) $2,000 in the case of a 2nd degree crime

(3) $1,000 in the case of a 3rd degree crime

(4) $ 750 in the case of a 4th degree crime

(5) $ 500 in the case of a disorderly persons or petty disorderly persons offense

$2,300

TOTAL D.E.D.R. Penalty 2000.00

DATE: 3-8-94

DEFENSE ATTORNEY

DEFENDANT

PROSECUTOR

US v. PERCY SPURLOCK 78

PERCY SPURLOCK
United States Penitentiary
1300 Metropolitan Avenue
Post Office Box 1000
Leavenworth, Kansas 66048-1000

-FILED-
JUL 20 2015
At ____ M
ROBERT N TRGOVICH, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

July 14, 2015

Clerk of the Court
United States District Court
for the Northern District of Indiana
5400 Federal Plaza
Suite 2300
Hammond, Indiana 46320

Re: Petition In Support of Motion Under 28 U.S.C. § 2255

District Court Case # 2-13-CR-0037

To the Clerk of the Court:

I would like to request that the enclosed document(s) be filed under the civil action which has been recently opened by a Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, or Correct the sentence imposed in the above-referenced district court case. I have not received the new case number, file on or around July 6, 2015. I would also like to request a copy of the docket sheet to confirm recent and proper filing.

Thank you for your time and attention with this matter.

Sincerely,

Percy Spurlock

Enclosures: Petition In Support Of Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence
Certificate of Service

USA
FOREVER

LEGAL MAIL

IF RETURNED, OPEN ONLY IN THE PRESENCE OF INMATE -- LEGAL MAIL!!!!

KANSAS CITY 640
16 JUL 2015 PM

⇔12817-027⇔
U S District Court
Clerk of the Court
5400 Federal PLZ
Suite 2300
Hammond, IN 46320
United States